

1 DAVID C. SHONKA
2 Acting General Counsel

3 EVAN ROSE, Cal. Bar No. 253478
4 MATTHEW D. GOLD, N.Y. Bar No. 2073963
5 LAURA FREMONT, Cal. Bar No. 159670
6 ERIC EDMONDSON, D.C. Bar No. 450294
7 KERRY O'BRIEN, Cal. Bar No. 149264
8 DAVID M. NEWMAN, Cal. Bar No. 54218
9 LINDA K. BADGER, Cal. Bar No. 122209

Address: Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103

10 Email: erose@ftc.gov; mgold@ftc.gov; lfremont@ftc.gov;
11 eedmondson@ftc.gov; kobrien@ftc.gov;
12 dnewman@ftc.gov; lbadger@ftc.gov

13 Tel. / Fax: (415) 848-5100 / (415) 848-5184

14 Attorneys for Plaintiff
15 FEDERAL TRADE COMMISSION

16 UNITED STATES DISTRICT COURT
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

18 FEDERAL TRADE COMMISSION,

19 Plaintiff,

20 v.

21 AT&T MOBILITY LLC, a limited liability
22 company,

23 Defendant.

Case No. 14-cv-04785-EMC

**STIPULATED REQUEST FOR
FURTHER LIMITED BRIEFING
REGARDING DEFENDANT AT&T'S
MOTION TO DISMISS**

Hearing Date: Mar. 12, 2015

Time: 9:30 a.m.

Courtroom: 5, 17th Floor

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Stipulated Request for Further Briefing – 14-cv-04785-EMC

1 Pursuant to Civil Local Rules 7-3(d) and 7-12, plaintiff Federal Trade Commission
2 (“FTC”) and defendant AT&T Mobility LLC (“AT&T”) (collectively, the “Parties”) hereby
3 respectfully request Court approval to submit limited additional briefing relevant to AT&T’s
4 Motion to Dismiss (Dkt. #29). This request is occasioned by recent action by the Federal
5 Communications Commission (“FCC”). Earlier today, the FCC issued an order reclassifying
6 broadband internet access services – including the mobile data service at issue in this case – as
7 common carriage subject to Title II of the Communications Act. *See FCC Adopts Strong,*
8 *Sustainable Rules to Protect the Open Internet*, FCC press release, Feb. 26, 2015, *available at*
9 http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0226/DOC-332260A1.pdf.
10 Because AT&T’s motion relies on the common carrier exemption to Section 5 of the FTC Act,
11 15 U.S.C. § 45, the parties believe that the Court would benefit from further limited briefing on
12 what effect, if any, the FCC’s action should have on this matter.

13 Accordingly, the parties request the following additional briefing:

- 14 1. A sur-reply, not to exceed ten pages, to be filed by the FTC on Tuesday, March 3,
15 2015. 2
- 16 2. A sur-sur-reply, not to exceed ten pages, to be filed by AT&T on Friday, March 6,
17 2015. 5

18 Pursuant to Civil Local Rule 5-1(i), I hereby attest that I have obtained concurrence in the
19 filing of this document from all other signatories to this document.

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21 Respectfully submitted,

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23 Dated: Feb. 26, 2015

24 DAVID C. SHONKA
25 Acting General Counsel

26 /s/ Evan Rose
27 EVAN ROSE *et al.*

28 Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

1 Dated: Feb. 26, 2015

KELLOGG, HUBER, HANSEN, TODD,
EVANS & FIGEL, P.L.L.C.

2
3 /s/ Michael K. Kellogg
MICHAEL K. KELLOGG

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5 Attorney for Defendant
AT&T MOBILITY LLC

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8 PURSUANT TO STIPULATION, IT IS SO ORDERED.
9 FTC's sur-reply due by Monday, March 2, 2015.
AT&T's sur-reply due by Thursday, March 5, 2015.

10 DATED: 2/27/15

11 HONORABLE EDWARD M. CHEN
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

